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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL Commissioner
MARC SPITZER Commissioner
MIKE GLEASON Commissioner
KRISTIN K. MAYES Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 MAY 31 P 4: 22

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IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC. AGAINST
VISTANCIA COMMUNICATIONS,
L.L.C., SHEA SUNBELT PLEASANT
POINT, L.L.C., AND COX ARIZONA
TELCOM, LLC

DOCKET NO. T-03471A-05-0064

**ACCIPITER'S RESPONSE TO STAFF'S BRIEF REGARDING
COX ARIZONA TELCOM, LLC'S MOTION TO DISMISS.**

Accipiter agrees with the analysis of the jurisdictional issues and claims set out by the Commission Staff in the docketed version of their brief filed May 20, 2005. Cox's Motion to Dismiss must be denied. We submit this reply to request that the hearing officer direct Staff to draft an Order to Show Cause naming all four principal companies involved in this complex scheme; Shea Sunbelt Pleasant Point, Vistancia Communications, Cox Arizona Telecom and CoxCom, Inc. to be submitted to the Commission for consideration and hearing on an expedited basis. We believe that under the circumstances of this Docket, an Order to Show Cause is an appropriate procedure to provide these entities with notice and an opportunity to be heard, to conduct an evidentiary hearing establishing appropriate factual findings, and for the Commission to enter appropriate rulings and orders halting the unlawful actions that have created a growing monopoly situation in Vistancia, and to fashion an appropriate remedy opening Vistancia to competition.

Arizona Corporation Commission
DOCKETED

MAY 31 2005

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1 Cox is just wrong about the Commission's jurisdiction. Also, we believe that
2 indispensable party analysis simply does not apply over the Commission's authority to order
3 a public service corporation to conduct its business in this state in compliance with all
4 applicable provisions of our constitution and statutes and Commission regulations and orders.
5 The four entities at issue; Shea Sunbelt, Vistancia Communications, Cox Arizona Telecom
6 and CoxCom, are each individually acting as public service corporations, and each one
7 independently falls within the jurisdiction of the Corporation Commission. They also each
8 come within the Commission's jurisdiction because of the affiliate and alter ego relationships
9 between the two developer entities and between the two Cox entities. They also come within
10 the Commission's jurisdiction under a joint venture theory, under a pendent jurisdiction
11 theory, and under the Commission's necessary jurisdiction over related party transactions
12 under *Arizona Corporation Commission v. State, ex rel. Woods*, 171 Ariz. 286, 830 P.2d 807
13 (1992), as explained in Staff's brief at pages 19 and 20.

14 However, we believe it is appropriate to add CoxCom, Inc. (and any other Cox entity
15 that may be involved) as a named party in this matter. Adding CoxCom as a party will
16 reinforce the Commission's jurisdiction, and assure that all possible remedies are available
17 for the Commission to consider. Adding CoxCom will also provide assurance that Cox
18 Arizona Telcom's "we did not sign a thing" defense and other similar arguments that rely on
19 missing parties are eliminated.

20 The Respondents benefit from delay in several ways: with time, their monopoly over
21 Vistancia tightens; the developer comes closer to the perpetual 20% right-of-way fees; the
22 burden of litigation costs on a small rural carrier like Accipiter mounts; the cost to compete
23 grows; and the vastly superior financial resources of Cox and Shea Sunbelt become
24 increasingly dominant. The Commission can and should halt the mounting harm being done
25 in Vistancia by expediting its hearing and consideration of this matter through an Order to
26

1 Show Cause proceeding.

2 **1. To Avoid Splitting An Appeal of this Action, A Ruling On Jurisdiction**
3 **Should Wait for A Ruling on the Merits.**

4 The appropriate ruling to be made at this stage of this action should not include any
5 wording that could be misconstrued as a finding that jurisdiction exists. Instead, the ruling
6 should be limited to a holding that from the materials that have been submitted in the docket
7 so far, it appears that jurisdiction is probable such that it is appropriate to deny Cox Arizona
8 Telcom's Motion to Dismiss.

9 We stress the importance of holding an evidentiary hearing to establish the record and
10 appropriate factual findings supporting jurisdiction before any final ruling on jurisdiction is
11 entered. The final ruling on jurisdiction should be reserved until a final order is entered on
12 the merits of this matter. Apparently, part of the developer's and Cox's strategy includes a
13 possible court challenge contesting the Commission's jurisdiction. In this case, the issue of
14 jurisdiction is irremovably intertwined with the facts which must be established through an
15 appropriate record and findings. We are concerned that the hearing officer and the
16 Commission be doubly careful to make no early decisions that could in any way, even
17 arguably, be interpreted as a finding that jurisdiction exists until there has been an
18 appropriate evidentiary hearing. Our concern is that if an order is made on the jurisdictional
19 issues prematurely, in advance of a ruling on the merits, Cox and the developer will attempt
20 an interlocutory appeal to either state or federal court which would leave the Commission and
21 Accipiter having to litigate this proceeding in two actions; both in front of the Commission
22 and on appeal at the same time. Any ruling at this stage should be limited to finding
23 sufficient record to deny Cox's Motion to Dismiss, and reserving the final decision on
24 jurisdiction until a final decision on the merits.

25 There is a clear need to expedite the Commission's consideration of the issues
26

1 illuminated by this complex set of agreements constructed by related parties that Cox Arizona
2 Telcom contends have numbed the Corporation Commission's jurisdiction and frozen
3 competition and the Commission out of telecommunications in Vistancia.

4 **2. The Need for Expedited Consideration—Increasing Pavement and A**
5 **Captive Customer Base Will Doom Wireline Competition**

6 With their tangle of documents—the CSER, the MUE&I, the NELA-CMA, the
7 NELA-PPA, the secret agreements, and the numerous multi-sheet plats, maps and other
8 instruments—Shea Sunbelt, Vistancia Communications, Cox Telcom and CoxCom
9 concocted a multi-layered barrier restraining competition from reaching the public in
10 Vistancia. But in addition to the recorded documents and the secret agreements, other much
11 more permanent barriers are being erected every day which provide Cox with greater
12 resiliency from Commission intervention.

13 **A. *The Developer Paves Out the Competition***

14 The developer has not been stagnate since signing up for this scheme with Cox.
15 Instead, they are building infrastructure and selling homes. Perhaps about 40% of the main
16 thoroughfares through the central portions of Vistancia are already paved, landscaped, etc.
17 Shea Sunbelt would undoubtedly have more extensive data on the progress of construction,
18 but they have elected not to provide any information for this docket. These are the logical
19 locations for the telephone feeds into the community. A color copy of an early phasing map
20 for the southern parts of Vistancia is attached to this brief as Exhibit 6. As the streets are
21 paved over and driveways, landscaping and other improvements are installed in the paths to
22 the home sites, the cost of laying cable increases dramatically. As lots are sold and
23 construction progresses, it gets more and more difficult for the Commission to enter an order
24 that will be effective in opening Vistancia to competition.

1 B. *Cox's Stated Plan Is to Effectively Lock in its Customers by Bundling its Other*
2 *Products with Phone Service.*

3 It is a central part of Cox's nationwide business plan to use the addition of telephone
4 service to, in effect, lock in its customers with multi-product plans. In the telephone
5 business, like any business, once a customer is signed up for a competitor's service, it is
6 difficult (and costly) to persuade that customer to switch providers, and it is even more
7 difficult to switch over a customer with multiple services. According to Jim Robbins,
8 President and Chief Executive of Cox Communications, Inc., when Cox "bundles" a
9 customer with a package deal by adding telephone to its other main products of television
10 and highspeed internet, Cox's disconnect rate drop 41% lower than its disconnect rate for
11 customers with a single service. Letter to the editor, Wall Street Journal from Jim Robbins,
12 published March 9, 2005, (copy attached as Exhibit 1). Also going along concurrently with
13 local phone service, Cox recognizes that 82% of its customers will also sign up with Cox for
14 their long distance service. *Id.* Under this strategy of bundling other products with
15 telephone, Cox professes to achieve Ebitda margins of over 40% in its phone product. *Id.*
16 Couple the profitability with the increased multi-product customer "lock" that Cox's self-
17 made monopoly position over all wireline communications services in Vistancia has provided
18 so far, and it is understandable why Cox and the developer would like to delay any
19 Commission action on this matter as long a possible.

20 3. **CoxCom Should Be Added As A Party.**

21 We do not believe "indispensable party" analysis applies in this case. However, to
22 keep all possible remedies available to the Commission, CoxCom, Inc. should be added as
23 a party respondent.

24 Since Rule 19 of the Rules of Civil Procedure was amended in 1966, the time-honored
25 categories of 'indispensable,' 'necessary,' and 'proper' parties have been largely discarded with
26

1 emphasis being placed on the practical realities of joinder. *Riley v. Cochise County*, 10 Ariz.
2 App. 55, 58, 455 P.2d 1005, 1008 (Ariz. App. 1969). The *Riley* court quotes *Provident*
3 *Tradesmens Bank & Trust Company v. Patterson*, 390 U.S. 102, 88 S.Ct. 733, 19 L.Ed.2d
4 936 (1968), where the Supreme Court of the United States pointed out that pragmatic
5 considerations control determinations of "indispensability." The Court stated:

6 Whether a person is 'indispensable,' that is, whether a particular lawsuit must
7 be dismissed in the absence of that person, can only be determined in the
8 context of particular litigation. * * * The decision whether to dismiss (i.e., the
9 decision whether the person missing is 'indispensable') must be based on
10 factors varying with the different cases, some such factors being substantive,
11 some procedural, some compelling by themselves, and some subject to
12 balancing against opposing interests. Rule 19 does not prevent the assertion of
13 compelling substantive interests; it merely commands the courts to examine
14 each controversy to make certain that the interests really exist. To say that a
15 court 'must' dismiss in the absence of an indispensable party and that it 'cannot
16 proceed' without him puts the matter the wrong way around: a court does not
17 know whether a particular person is 'indispensable' until it has examined the
18 situation to determine whether it can proceed without him.' 88 S.Ct. at 742--
19 743.

20 *Riley v. Cochise County* 10 Ariz. App. 55, 58-59, 455 P.2d 1005, 1008-1009 (Ariz.App. 1969)

21 The Arizona Court of Appeals case of *Tonto Creek Estates Homeowners Assoc. v.*
22 *Arizona Corporation Commission*, 177 Ariz 49, 864 P.2d 1081 (Ariz. App. 1993), provides
23 a graphic example of the far reaching power of the Commission to order a public service
24 corporation to perform in accordance with the applicable laws and regulations, regardless of
25 who else may or may not be before the Commission. In *Tonto Creek*, a homeowners
26 association was operating as a public service corporation providing water service in two
subdivisions without a CC&N. Another public service corporation held the CC&N. After
receiving a complaint by a property owner that had been refused service, the Commission
issued a complaint and order to show cause to the homeowners association. Notice of the
proceeding was not given to the other public service corporation that officially held the
CC&N. The Court of Appeals upheld all provisions in the Commission's order that required
the homeowners association to provide services in accordance with the applicable laws and

1 regulations. The only part of the Commission's order that the Court of Appeals struck down
2 was the requirement for the CC&N to be transferred to the homeowners association. That
3 portion of the order violated a statute that requires notice to the corporation affected before
4 the Commission modifies a prior order. The Commission has the power to order an un-
5 certificated public service corporation to provide services in accordance with the laws and
6 regulations governing public service corporations. Under *Tonto Creek*, this is true even
7 when the holder of the CC&N for the area had not been given notice of the complaint.

8 In *Tonto Creek*, the homeowners association argued unsuccessfully that the rights of
9 the absent certificate holder would be harmed if the Commission's order directing the public
10 service corporation to provide nondiscriminatory service throughout its service area were
11 upheld. The Court of Appeals rejected any such defense and refused to allow the offending
12 public service corporation to assert the due process rights of the absent public service
13 corporation.

14 Applying these concepts from *Tonto Creek* to this case highlights both the prudence
15 of adding CoxCom as a named respondent and the fact that the Commission still has
16 jurisdiction over the other named parties even if CoxCom is not added. For example, even
17 without adding CoxCom as a party, the Commission has the jurisdiction to order the
18 developer entities and Cox Telcom, as public service corporations, to apply for and obtain
19 a CC&N before proceeding to use any of their plant property and equipment to supply
20 telecommunication services to the public in Vistancia. However, naming CoxCom as a party
21 is required to assure that the broadest possible remedies are available for the Commission to
22 consider. One possible option that the Commission should consider is that given Cox's
23 monopoly position in Vistancia, the Commission can make appropriate findings that Cox is
24 a monopoly telephone service provider in Arizona and order Cox to open its statewide
25 network to leasing by its competitors in the form of unbundled network elements as other
26

1 monopoly providers do. From Cox Telcom's somewhat cryptic discussion about this issue,
2 we believe their position is that, because they claim to not own the wires and switching
3 equipment, there is nothing to order Cox Telcom to unbundle. We are not yet convinced that
4 there is a meaningful difference between CoxCom, Inc., and Cox Arizona Telcom, L.L.C.
5 For example, these two entities have filed Fictitious Name Certificates for the same or
6 confusingly similar names, such as Cox Communications, and Cox Business Services. *See*
7 *e.g.*, Maricopa County Recorder's Instrument Numbers 1998-0316807, 1999-0788641, and
8 2000-0649417 (copies attached as Exhibits 2, 3, and 4). But with CoxCom, Inc. added as a
9 party, we will be sure that all proper parties in the chain of companies providing monopoly
10 service would be included in the same proceeding making unbundling a viable option for the
11 Commission's consideration. Accipiter's desire is to open the development for head-to-head
12 facilities based competition, but at the same time we do not want to discard or remove any
13 reasonable alternative solutions.

14 **4. Cox Publically Agrees that Excessive Right-Of-Way Fees Squelch**
15 **Competition and Harm Consumers.**

16 This past winter Cox participated in an effort to lobby our state legislature to pass a
17 bill designed to force the lowering of franchise fees that many cities charge for access to
18 right-of-ways. These municipal right-of-way fees are typically 4 or 5 percent. In a recent
19 Arizona Republic article, Ivan Johnson, Cox's vice president of communications and
20 TeleVideo, is quoted as saying "We are going to make sure our customers, the voters, are
21 aware of how they are being disadvantaged." Arizona Republic, *Cox Vows to Continue its*
22 *Fight to Lower Cable TV Access Fees* (May 23, 2005), copy attached as Exhibit 5. Having
23 failed on the legislative front, Cox vows to take this issue to the voters in each city as a grass
24 roots campaign to persuade city officials of the disadvantage that high right-of-way fees are
25 placing on the public.

1 We do not know which Cox entity includes the vice president of communications and
2 TeleVideo, but we believe the Commission should give Cox an opportunity to explain its
3 position on this issue. How a 5% right-of-way fee imposed by a city can so disadvantage
4 consumers, but in Vistancia a 20% right-of-way fee that Cox has voluntarily contracted to
5 pay the developer, in addition to the normal fees charged by the municipality, coupled to a
6 contractual monopoly over wireline service is supposedly just normal competition that Cox
7 asks the Commission should ignore escapes us. Under Cox's published position, the
8 Vistancia scheme with its five times higher right-of-way fees should force the consumers into
9 a many times worse disadvantage than municipal right-of-way fees. The hypocrisy on these
10 issues reaches the highest levels within Cox, and it should not be lost in this Docket because
11 the phone company arm of Cox may point to the wire and equipment arm or to any other Cox
12 affiliated entities that may be involved. All of them should be named as respondent parties.

13 **5. There is a Document Request With the City.**

14 We have submitted a public records request to the City of Peoria asking for copies of
15 its records relating to the MUE&I and these communications easements in Vistancia. The
16 City has not yet responded, but we will submit copies of all documents we receive from the
17 City to the Commission Staff and file them in the Docket as appropriate. Based on what we
18 know at this time, we do not believe the Corporation Commission would be a proper forum
19 to address the actions of the City, and we do not believe the City needs to be added as a party.

20 **6. Shea Sunbelt Has Changed Its Name.**

21 Additionally, since filing the Complaint, it has come to our attention that Shea Sunbelt
22 Pleasant Point, L.L.C., has changed its name to Vistancia L.L.C. It is apparent that this party
23 still does business under its old name of Shea Sunbelt Pleasant Point, L.L.C., as evidenced
24 by the several letters from its counsel in this docket. However, to be certain any order is
25 binding on this entity, we request that the allegation that Shea Sunbelt Pleasant Point,
26

1 L.L.C., is “also known as Vistancia L.L.C.,” be included in any OSC issued by the
2 Commission.

3 It is our understanding that an Order to Show Cause proceeding will significantly
4 expedite this matter. That is why we believe it is the most appropriate procedure to use under
5 the circumstances. However, Accipiter does not intend this request to be interpreted as an
6 abandonment of any of the claims in the Complaint. If the hearing officer’s decision is that
7 this matter should proceed under the Complaint along with or instead of an Order to Show
8 Cause, we request leave to amend the Complaint to add these appropriate allegations
9 regarding Shea Sunbelt and CoxCom. But it is Accipiter’s expectations and desire that an
10 Order to Show Cause proceeding can bring about a speedy and satisfactory resolution of this
11 matter.

12 **7. Conclusion.**

13 Accipiter requests that the Hearing Officer direct staff to draft and submit an Order
14 to Show Cause to the Commission on an expedited basis. Cox’s Motion to Dismiss should
15 be denied. But, a final ruling on the jurisdiction issue should only be made in conjunction
16 with a ruling on the merits after holding an evidentiary hearing.

17 CoxCom should be added as a party to this matter and given notice and an opportunity
18 to be heard. This will preserve the broadest possible remedies for the Commission to
19 consider.

20 Accipiter also requests leave to amend the Complaint to add CoxCom as a party
21 should the Hearing Officer decide that the Complaint should proceed along with the Order
22 to Show Cause.

1 RESPECTFULLY SUBMITTED this 31st day of May, 2005.

2 MORRILL & ARONSON, P.L.C.

3 By William A. Cleaveland

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8 Attorneys for Accipiter Communications
9 Telephone: (602) 263-8993
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11 ORIGINAL and 13 copies of the foregoing
12 filed this 31st day of May, 2005 with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 COPY of the foregoing hand-delivered
18 this 31st day of May, 2005 to:

19 Lyn A. Farmer, Esq.
20 Chief Administrative Law Judge
21 Hearing Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Christopher C. Kempley, Esq.
26 Chief Counsel, Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007

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Arizona Corporation Commission
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Phoenix, Arizona 85007

1 COPY of the foregoing mailed
2 this 31st day of May, 2005 to:

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7 Michael M. Grant, Esq.
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9 2575 E. Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Shea and Vistancia Communications

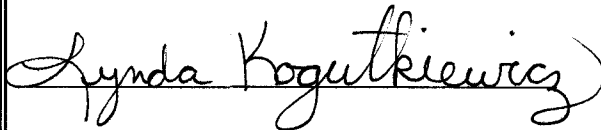
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EXHIBIT 1



Dow Jones & Reuters

THE WALL STREET JOURNAL

Letters to the Editor

At Cox, We Gauge Success By Quality, Profitability

329 words

9 March 2005

The Wall Street Journal

A21

English

(Copyright (c) 2005, Dow Jones & Company, Inc.)

I believe your Feb. 23 Marketplace article "Time Warner's Phone Service Shows Cable's Growing Clout" mischaracterized Cox Communications Inc.'s phone service as unsuccessful and slow to roll out in our footprint. Indeed, at the end of 2004 Cox had more telephone customers than any other cable company, with more than 1.3 million phone customers nationwide. In 2004 we added approximately 317,000 telephone customers, more than any other U.S. cable operator.

You're correct when you wrote that Cox has launched telephone service in 17 markets out of 26 since 1997, but we feel it's more relevant to identify that 60% of our total footprint is now serviceable since some markets can vary drastically in size. We also chose to increase penetration of phone service in our larger markets before entering new ones, in contrast to other cable operators' strategies. In Omaha, Neb., and Orange County, Calif., 40% of consumers subscribe to Cox Digital Telephone, and 82% of our phone customers elect Cox for their long-distance service.

Success isn't measured by quantity alone but by quality and profitability as well. In 2003 and 2004, J.D. Power & Associates determined that Cox Communications earned the highest customer satisfaction scores for telephone service in the Western region -- beating entrenched regional Bell operating competitors Qwest and SBC Communications. And profitability on our telephone product has improved significantly, with Ebitda margins now above 40%. Our "bundled" customers, those with voice, video and Internet, are extremely satisfied, with disconnect rates 41% lower than single-product customers.

We applaud Time Warner Cable for its aggressive move into telephony and for bringing choice in local phone service to consumers in its markets. Time Warner's deployment strategy is different than ours, and we hope they will be every bit as successful as Cox has been.

Jim Robbins

President and Chief Executive

Cox Communications Inc.

Atlanta

Document J000000020050309e13900026

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EXHIBIT 2

When recorded mail to:



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HELEN PURCELL

98-0316807 04/20/98 03:09

VIRGINIA 2 OF 2

CAPTION HEADING:_____

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This is part of the official document.

CERTIFICATE OF CORPORATION DOING BUSINESS UNDER FICTITIOUS NAME

PURSUANT TO PROVISIONS OF A.R.S. SEC. 44-1236

KNOW ALL MEN BY THESE PRESENTS:

That COX ARIZONA TELCOM II, L.L.C. whose business address is


17602 N. Black Canyon Hwy., Ste. 111, Phoenix, AZ, is conducting a business in
85023

Arizona under the name of:

COX COMMUNICATIONS

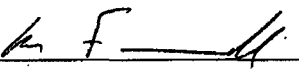
Dated: April 7, 1998

COX ARIZONA TELCOM II, L.L.C.

By 
Andrew A. Merdek, Secretary for
CoxCom, Inc., sole member of
Cox Arizona Telcom II, L.L.C.

Statutory Agent

C T CORPORATION SYSTEM

By 
~~ALLAN FARNELL, ASSISTANT SECRETARY~~

STATE OF Georgia)
: SS
County of Dekalb)

This instrument was acknowledged before me this 7th day of April,
1998, by Al Farnell a duly authorized representative of C T Corporation System, the
statutory agent in Arizona for COX ARIZONA TELCOM II, L.L.C..

My commission expires:

JENNIFER F. AULTMAN
Notary Public, DeKalb County, Georgia
My Commission Expires Aug. 27, 2001


Notary Public

EXHIBIT 3

Hold for Runner
AccuSearch, Inc.
505 W. McDowell Rd., Bldg. C.
Phoenix, AZ 85003
(800) 462-7019

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

99-0788641 08/20/99 03:06

SYLUIA 1 OF 1

FICTITIOUS NAME CERTIFICATE

To the County Recorder
County of Maricopa

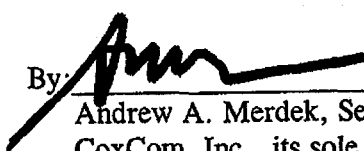
Pursuant to the provisions of 44-1236, Arizona Revised Statutes,
the corporation hereinafter named has caused the following to be certified:

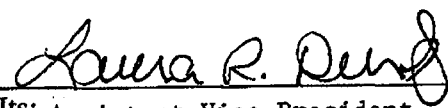
1. The name of the corporation is Cox Arizona Telcom, L.L.C., f/k/a
Cox Arizona Telcom II, L.L.C.
2. The address of the corporation is 17602 N. Black Canyon Hwy, Ste.
111, Phoenix, AZ 85023.
3. The corporation is incorporated under the laws of the State of
Delaware and is authorized to transact business in the State of
Arizona.
4. The corporation is conducting business in Arizona under the
following fictitious name or designation: Cox Communications.
5. The corporation hereby consents to the signing and acknowledging of
the certificate by its corporate statutory agent.

Dated:

Cox Arizona Telcom, L.L.C.

Corporation Service Company

By: 
Andrew A. Merdek, Secretary of
CoxCom, Inc., its sole member

By: 
Its: Assistant Vice-President

(SEAL)

EXHIBIT 4

CSC
3636 N. CENTRAL
SUITE 970
PHOENIX, AZ 85012

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2000-0649417 08/24/2000 09:40

OSCAR 1 OF 3

FICTITIOUS NAME CERTIFICATE

To the County Recorder
County of Maricopa

Pursuant to the provisions of 44-1236, Arizona Revised Statutes, the companies hereinafter named has caused the following to be certified:

1. The names of the companies are CoxCom, Inc. and Cox Arizona Telcom, L.L.C.

2. The address of the companies is 17602 North Black Canyon Highway, Phoenix, Arizona 85053.

3. The companies are incorporated or organized under the laws of the State of Delaware and are authorized to transact business in the State of Arizona.

4. The companies are conducting business under the following fictitious name or designation: Cox Business Services.

Dated: 8-21-00

Corporation Service Company

By: Deborah D. Skipper
Title:

Deborah D. Skipper
Asst. Secretary

STATE OF)
) SS.:
 COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
 of, August 2000 by _____, President of _____
 _____, a _____ on behalf of CoxCom, Inc.
 and Cox Arizona Telcom, L.L.C.

Harry B. Davis

Notary Public
 Commission expires:

[notarial seal]



[insert serial number, if any]

EXHIBIT 5

azcentral.com

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Today | This Week

Cox vows to continue its fight for lower cable TV access fees

Ken Alltucker
The Arizona Republic
May. 23, 2005 12:00 AM

Cox Communications couldn't persuade lawmakers to lower cable fees, so the cable giant may appeal directly to local governments or even voters.

A bill that would eliminate millions of dollars in fees paid by the Atlanta-based company and other cable providers was narrowly defeated this legislative session. But Cox vows to continue its pursuit of lower fees whether it means ratcheting up pressure on local governments or pursuing a voter initiative.

"This will change," said Ivan Johnson, Cox's vice president of communications and TeleVideo. "We will not let this inequity continue."

The issue pits cable companies seeking to shave fees vs. local governments that have grown accustomed to an annual stream of cash by selling the right-of-way access.

Cable representatives contend the industry and its customers are being singled out because they must pay cities for right-of-way access. Cable groups add that satellite and wireless providers aren't stuck with a comparable tax or fee, so it effectively gives those services a competitive advantage.

Qwest also pays a license fee for its competitive product, Choice TV. Qwest pays about \$1.2 million in license fees for its 50,000 subscribers in Phoenix, Chandler, Gilbert and five other area municipalities, spokesman Jeff Mirasola said.

"Our customers are being taxed disproportionately," said Susan Bitter Smith, executive director of the Arizona Cable Telecommunications Association. "You look at a gas bill, a water bill and an electric-power bill, and you will not see those kinds of taxes."

Cities have a different view. They say the access fees provide an important source of revenue that pays for basic government services such as police and fire protection.

If passed, the Cox-backed proposal would have cost Arizona's eight largest cities nearly \$10 million and forced decisions on which services to cut.

Mayors from Phoenix to Winslow say they are merely playing by congressional rules established more than two decades ago.

"The rules of the game were adopted by Congress," said Jim Boles, Winslow mayor and president of the League of Arizona Cities and Towns.

"If they want to change the rules, they need to go to Congress."

The Arizona Cable Telecommunications group already is studying options. It may return next legislative session and lobby to get a similar bill passed. Another option could be a voter initiative.

"That's a traditional fall-back position in Arizona," Bitter Smith said of a voter

initiative. "We have to do more analysis to see what consumers want. This is a direct-line item on consumers' bills."

In lieu of a change in state laws, Cox plans to take its case to each community when these license agreements are due for renewal. They will make that appeal directly to cable customers and voters with the carrot of lower cable bills.

An example that Cox intends to follow is what it calls a grass-roots effort to change the license agreement with Mesa. Two years ago, the city adopted a new 15-year cable license that reduced the amount charged for right-of-way access to 4.5 percent from 5 percent of gross revenue. Savings for customers of Cox and CableAmerica amounted to \$5.1 million over 15 years, according to Cox.

Johnson said Cox and CableAmerica achieved the Mesa deal only after a citizens group, Citizens for Lower Taxes, pressured the Mesa City Council. The Mesa-based citizens group, which is funded by Cox and CableAmerica, collected nearly 5,000 signatures with an eye toward forcing a city initiative unless the City Council voted to accept a lower cable-license rate.

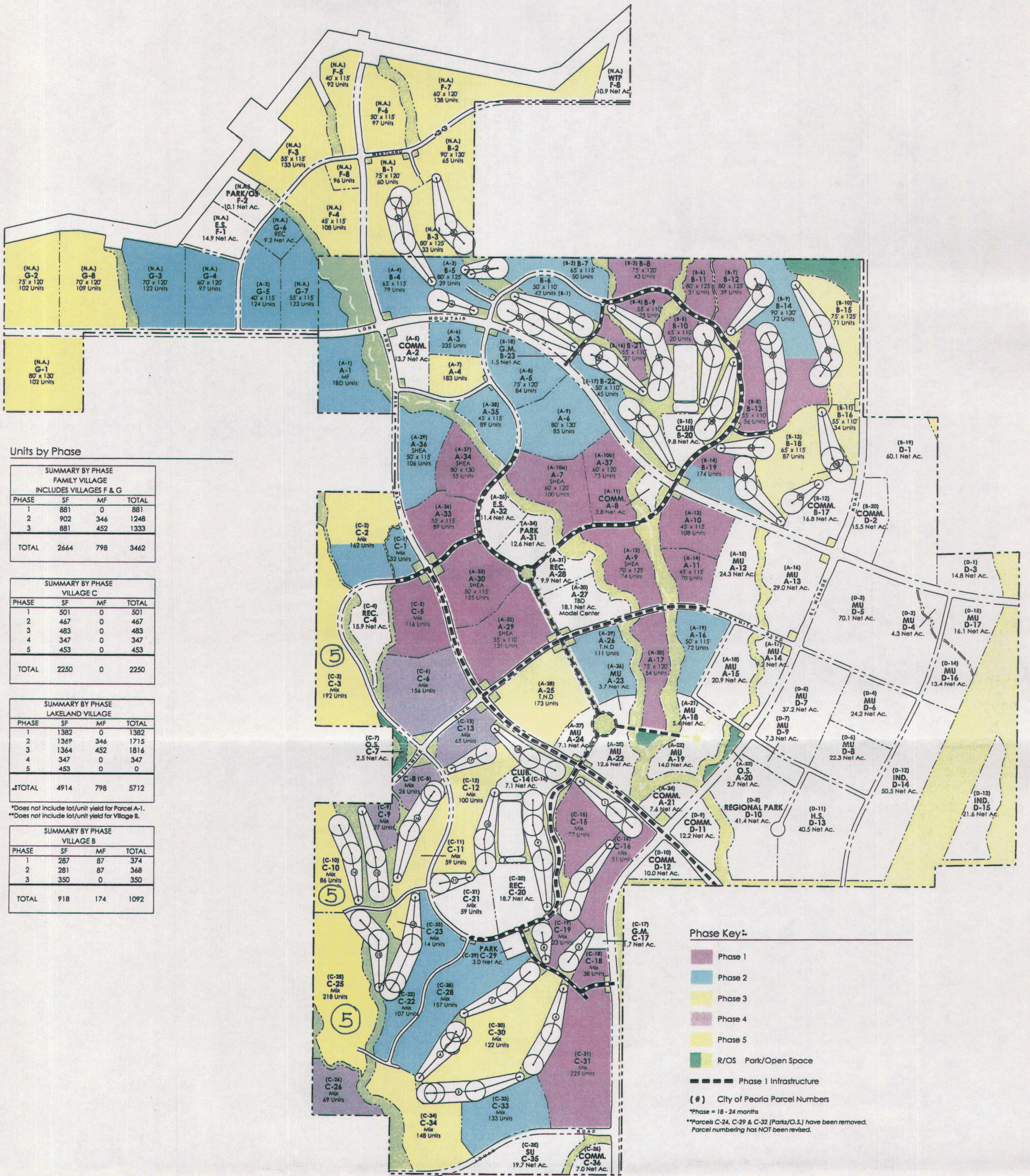
Johnson said Cox could plan similar campaigns in other cities as license agreements are up for renewal.

"We got huge support in Mesa," Johnson said. "We are going to make sure our customers, the voters, are aware of how they are being disadvantaged."

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EXHIBIT 6



SHEA / SUNBELT PROPERTY LAKELAND VILLAGE - PHASING MAP

